

**39-71-2313. State compensation insurance fund created -- obligation to insure.** (1) There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

(2) The state fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a state fund obligation and the default remains unsatisfied.

**History:** En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 305, L. 1995.

**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund. Except for a transfer authorized under 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b).

**2007 Amendment:** Chapter 475 in (1) near middle of first sentence after "accordance with" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

(Version effective on occurrence of contingency) Chapter 276 in (1), in first sentence after "money", inserted "taxes collected under 39-71-2503 and 39-71-2505, and the interest and penalties on the taxes in accordance with 15-1-501"; deleted former (2) that read: "(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990"; and made minor changes in style. Amendment effective on the date that the budget director certifies that the old fund liability tax is terminated pursuant to 39-71-2505 (now repealed).

**Preamble:** The preamble attached to Ch. 276, L. 1997, provided: "WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, terminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of \$355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included \$129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as \$50 million each year; and

WHEREAS, the surplus of \$231 [sic] in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to \$109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated \$200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated \$127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, the State Fund shall, no later than June 30, 1998, transfer \$63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to policyholders; and

WHEREAS, the \$20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the \$20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's

ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

**39-71-2330. Rate setting -- surplus -- multiple rating tiers.** (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier.

**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; and

(b) the cost of administering the claims.

(5) An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid.